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DEC 09 2008

OFFICE OF PETITIONS

In re Application of : DECISION ON
Moriichi et al. : PETITION
Application No. 09/761,961 : and
Filed: January 17, 2001 : NOTICE OF
Atty Docket No. 204684US6 : ABANDONMENT

This is a decision on the REQUEST FOR WITHDRAWAL OF HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE NOTICE OF ALLOWANCE/ALLOWABILITY originally filed December 27, 2002, and resubmitted on November 16, 2004. This also responds to the PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONED APPLICATION UNDER 37 C.F.R. 1.137(A) filed March 4, 2005¹.

The petition under 1.181 is **GRANTED to the extent** that the Notice of Abandonment mailed October 30, 2002 is withdrawn; however, the petition is **DISMISSED** to the extent that the holding of abandonment will not be withdrawn. For the reasons stated herein, the application is held abandoned effective April 29, 2001 for failure to timely file a response to the Notice to File Missing Parts of Nonprovisional Application mailed February 28, 2001.

Any request for reconsideration pursuant to 37 CFR 1.181 must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are not permitted. See 1.181(f).

Alternatively, applicants may seek revival under the provisions of 37 CFR 1.137. Such a request should include a cover letter entitled "Petition under 37 C.F.R. § 1.137(a)" or "Petition under 37 C.F.R. § 1.137(b)," as appropriate.

¹ A review of the record makes clear that applicants also filed status inquiries on December 16, 2002 and July 30, 2003; and resubmitted the petition on January 9, 2004.

By Notice of Abandonment mailed October 30, 2002, applicants were advised that the above-identified application had become abandoned for failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance.

In response, applicants timely filed the instant petition, requesting that the holding of abandonment be withdrawn on the basis that applicants never received a Notice of Allowance (or any accompanying Notice of Allowability). In support thereof, applicants provided copies of mail logs and docket records for this application.

There is a strong presumption that correspondence is properly mailed to the applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of the Notice of Allowance, applicants must submit evidence to overcome this presumption.

Consideration of applicants' showing² of nonreceipt is unnecessary. In this instance, the evidence of record overcomes the presumption that the Notice of Allowance was properly mailed to the applicant at the correspondence address of record. An irregularity in the mailing of the Notice of Allowance (and Notice of Allowability) exists. Specifically, consistent with applicants' assertion of nonreceipt, no Notice of Allowance (or Notice of Allowability) is present in the image file wrapper for this application.

The image file wrapper, and other Office records, reveal that:

- on February 28, 2001, the Office mailed a Notice to File Missing Parts of Application, requiring the statutory basic filing fee and an executed oath or declaration;
- on May 25, 2001, applicants responded with an extension of time, an executed declaration, late surcharge, statutory basic filing fee, authorization to charge any required fees to a Deposit Account and payment of fees by check;

² It is noted that applicants did not provide a copy of a master docket. See MPEP 711.03(c).

- on October 30, 2002, the Office mailed a Notice of Abandonment based on failure to timely pay the issue fee; and
- on August 10, 2005, after filing of the petition on March 4, 2005 (including submission of the issue fee), the Office marked the file as lost³.

Action on the instant petition could not occur until the file was reconstructed. On April 4, 2007, the Office mailed applicants a NOTICE UNDER 37 CFR 1.251 - Abandoned Application, requesting submission of papers needed for reconstruction of the file. This Notice set a three-month period for reply. On August 8, 2008, applicants filed a REQUEST FOR RECONSTRUCTION OF APPLICATION, with a copy of their itemized and date-stamped postcard evidencing that applicants timely responded to the Notice on July 3, 2007. The papers received in response to the Notice were recently made of record with a date of receipt of August 8, 2008.

Nothing in the reconstructed papers supports a conclusion that a Notice of Allowance (and Notice of Allowability) were ever mailed in this application. Having looked at all available papers, the totality of the evidence supports applicants' assertion of nonreceipt of the Notice of Allowance.

Nonetheless, a close review of the application reveals that the application did become abandoned, just not for the reason stated on the Notice mailed October 30, 2002 (and consequently not at the time indicated by the Notice). Rather, the application became abandoned for failure to file a timely and proper reply to the Notice to File Missing Parts of Application mailed February 28, 2001. This Notice set a two-month time limit for response, with extensions of time obtainable under 37 CFR 1.136(a). On May 25, 2001, applicants filed an extension of time for response within the first month, an executed declaration, late surcharge, statutory basic filing fee and authorization to charge any required fees to a Deposit Account. However, none of the papers filed were signed by attorney of record Gregory J. Maier. On every document his signature line was left blank. The declaration for patent submitted was executed by the inventors. However, absent the signature of the attorney on the accompanying documents the necessary payment of

³ It appears that some action on reconstruction began in 2005, but was not completed.

fees, including the required extension of time and filing fees, were not submitted. Moreover, a review of the file history reveals that no general authorization to charge the required fees was present in the application on May 25, 2001. Accordingly, there was no signed document to rely on for timely submission of a complete and proper reply. Thus, the application is abandoned.

It is specifically noted that the papers filed March 25, 2001 and lacking the signature appear to be the papers originally submitted to the Office and not copies of the papers resubmitted to the Office without signature pursuant to the subsequent reconstruction of the file.

No fee is required on petition under § 1.181.

Consideration of the petition under 37 CFR 1.137(a) on the basis that the application became abandoned for failure to pay the issue fee is unnecessary.

The \$500 charged on March 8, 2005 for consideration of the petition under 37 CFR 1.137(a) and accordingly, the issue fee of \$1400 and the publication fee of \$300 submitted pursuant to 37 CFR 1.137(a)(1) petition are being refunded to Deposit Account No. 15-0030, as authorized.

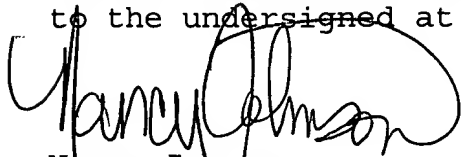
Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By fax: (571) 273-8300
 ATTN: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", written over the typed name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions